

DEC 11 2006

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

COMMISSION
SECRETARIAT

2006 DEC 11 P 3 05

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5724
DATE COMPLAINT FILED: 03/28/06
DATE OF NOTIFICATION: 04/03/06
LAST RESPONSE RECEIVED: 05/10/06
DATE ACTIVATED: 09/12/06
EXPIRATION OF SOL: 09/30/09

COMPLAINANT:

Neel Pender, Executive Director
Democratic Party of Oregon

RESPONDENTS:

Jim Feldkamp for Congress and
Patricia Siegmund, in her official capacity
as treasurer
James L. Feldkamp

RELEVANT STATUTES:

2 U.S.C. § 431(26)
2 U.S.C. § 434(b)
2 U.S.C. § 441a(f)
2 U.S.C. § 441b(a)
11 C.F.R. § 110.10
11 C.F.R. § 100.33

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This matter arises from a complaint alleging that James L. Feldkamp, a candidate for Oregon's 4th Congressional District seat in 2004, made loans to his campaign using excessive contributions and/or contributions from prohibited sources. Specifically, the complaint alleges that Feldkamp had insufficient personal funds to finance three loans totaling \$77,500 that he

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1 purportedly made to his campaign in September and October 2004. After evaluating the
2 available information, including Feldkamp's reply to a letter inviting him to clarify his response
3 to the complaint, we recommend that the Commission find reason to believe that James L.
4 Feldkamp violated 2 U.S.C. §§ 441a(f) and 441b(a) by accepting excessive and/or prohibited
5 contributions; and that Feldkamp for Congress and Patricia Siegmund, in her official capacity as
6 treasurer, violated 2 U.S.C. §§ 441a(f) and 441b(a) by accepting excessive and/or prohibited
7 contributions and violated 2 U.S.C. § 434(b) by inaccurately reporting the source of the loans in
8 question as Feldkamp's "personal funds." Finally, we recommend that the Commission
9 authorize an investigation to determine the source of the funds used to make the loans.

10 II. FACTUAL BACKGROUND

11 James L. Feldkamp was the 2004 Republican nominee for Congress in Oregon's 4th
12 Congressional District, and Jim Feldkamp for Congress was his principal campaign committee
13 ("the Committee"). The Committee reported receiving a loan of \$30,000 from Feldkamp on
14 September 30, 2004.¹ The Committee's disclosure reports show another \$30,000 loan from
15 Feldkamp to his campaign on October 6, 2004, followed by a \$17,500 loan on October 26, 2004.
16 All three loans, totaling \$77,500, were reported as coming from Feldkamp's personal funds. See
17 2004 October Quarterly Report (amended); 2004 Pre-General Report (amended); 2004 Post-
18 General Report (amended).

19 Feldkamp lost the 2004 election, and in September 2005, he announced his 2006
20 candidacy for the same Congressional seat. Shortly thereafter, he filed a Financial Disclosure

¹ This \$30,000 loan was made two weeks after the Committee had informed the FEC that it was refunding an excessive contribution of \$34,780 from Feldkamp's mother, which the Committee claims was accepted "in error under the advisement of a former campaign consultant." See Feldkamp Committee, FEC Miscellaneous Form 99, filed Sept. 16, 2004. At the time the candidate's mother, Phyllis Feldkamp, made the loan to the Committee, she had already contributed \$2,000 to Feldkamp's primary campaign and \$2,000 to his general election campaign.

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1 Statement with the U.S. House of Representatives. He then informed the Commission that he
2 was forgiving his previous loans totaling \$77,500 from the 2004 election cycle. See Letter from
3 Feldkamp to FEC (September 30, 2005).

4 Feldkamp's Financial Disclosure Statement, dated September 28, 2005, reveals non-
5 liquid assets in the form of publicly traded stocks, real property, private interests in two family
6 businesses and a thrift savings plan. According to Feldkamp, these assets are reportedly worth
7 somewhere between \$1,140,000 and \$5,400,050. See Feldkamp Response at 2 (May 10, 2006).
8 The unearned income he received from these assets in 2004 was reported as less than \$10,000.
9 Feldkamp reported no liquid assets, no salary for 2004, and a salary of \$30,730 for 2005.²

10 Furthermore, the Financial Disclosure Statement does not disclose any savings accounts, trusts,
11 or other liquid asset accounts.³

12 In his unsworn response to the complaint, Feldkamp asserts that he had sufficient
13 personal funds to make the loans in 2004 through his substantial non-liquid assets, income from
14 various sources, and history of receiving monetary gifts from his mother. He stated that he "has
15 drawn a salary from a variety of jobs" such as the FBI and U.S. Naval Reserves, but did not
16 indicate when he received these salaries or the amounts he received. Feldkamp further stated

² The Financial Disclosure Statement for Candidates, Schedule B, requires that candidates include income and asset information for the year of filing as well as the preceding year.

³ The Financial Disclosure Statement requires filers to disclose all interest-bearing, cash-deposit accounts at banks, credit unions and savings and loan associations, including interest-bearing checking accounts, passbook and other savings accounts, money market accounts, NOW accounts, certificates of deposit, and IRAs held in the form of savings accounts or CDs, if their total value exceeds \$5,000 as of the end of the reporting period or if any individual account exceeds \$1,000 as of the end of the reporting period. Filers are also required to disclose any income from or beneficial interest in principal or income in any trusts that have a fair market value of more than \$1,000 at the end of the reporting period.

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1 that he has regularly received monetary gifts from his mother, Phyllis Feldkamp, "for events
2 such as his birthday or Valentine's Day, or larger so-called lifetime gifts" over the past 15 years.⁴

3 Because Feldkamp only generally asserted that the loans were financed with his
4 "personal funds," but provided no specific information regarding the exact source of the funds,
5 and it is not readily apparent that the potential sources to which he cites were adequate to fund
6 the loans, we provided Feldkamp with an opportunity to clarify the exact source of the funds
7 used to make the loans. In his response to our letter seeking clarification, Feldkamp
8 merely stated that the source of the funds was his "own bank account," but provided no further
9 information or supporting documentation. See Attachment 1.

10 III. LEGAL ANALYSIS

11 The key issue in this matter is whether the funds that Feldkamp loaned to his campaign
12 were his personal funds. Congressional candidates may make unlimited campaign expenditures
13 from personal funds.⁵ See 11 C.F.R. § 110.10. However, if the funds for the loan were not
14 Feldkamp's personal funds, Feldkamp and the Committee may be liable for accepting excessive
15 or prohibited contributions, and the Committee may also be liable for misreporting them.⁶ See
16 2 U.S.C. §§ 441a(e)(1)(A), 441a(f), 441b(a), and 432(b).

⁴ In his response to the complaint, Feldkamp included a list of gifts that he received from his mother since 1990. The list reflects that since 1998, Feldkamp received an average of \$11,000 per year from his mother.

⁵ "Personal funds" include all assets in which a candidate has legal title or an equitable interest, as well as salary and other earned income from bona fide employment; dividends and proceeds from the sale of the candidate's stocks or other investments; bequests to the candidate; income from trusts established before candidacy; income from trusts established by bequest after candidacy of which the candidate is the beneficiary; gifts of a personal nature which had been customarily received prior to candidacy; and proceeds from lotteries and similar legal games of chance. See 2 U.S.C. § 431(26); 11 C.F.R. § 100.33.

⁶ Any candidate who receives a contribution in connection with his or her campaign shall be considered as having received such contribution as an agent of his or her authorized committee. 2 U.S.C. § 432(e)(2).

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1 The information presently available to us suggests that the loan funds may not have come
2 from Feldkamp's salary or non-liquid assets. Feldkamp's response to the complaint and his
3 Financial Disclosure Statement indicate that his assets are comprised of non-liquid stocks, real
4 estate holdings and a thrift savings plan. Feldkamp reported the combined income from these
5 assets as between \$5,000 to \$10,000 per year for 2004 and 2005, and none of the available
6 information suggests that Feldkamp liquidated any of these assets in order to make the loans.
7 Furthermore, Feldkamp disclosed on his Financial Disclosure Statement that he had no salary in
8 2004 and a salary of \$30,730 for 2005.⁷

9 When presented with an opportunity to clarify the source of the funds, Feldkamp did not
10 elaborate, stating only that the funds came from his "own bank account." He offered no further
11 details or documentation as to whether the funds in that bank account were his personal funds as
12 defined in 11 C.F.R. § 100.33. Furthermore, Feldkamp failed to disclose the existence of any
13 bank accounts on his Financial Disclosure Statement, and we have no further information at this
14 time upon which to evaluate his assertion that the \$77,500 came from his bank account or that
15 the account contained his personal funds.

16 It appears that Feldkamp may not have had sufficient income to make the loans to his
17 campaign, and his response did not indicate that he liquidated any assets in order to fund the
18 loan. Furthermore, Feldkamp's claims regarding the source of the funds are not supported by the
19 information contained in his response to the complaint, his response to our letter seeking
20 clarification, or the Financial Disclosure Statements he filed with the U.S. House of
21 Representatives. As a result, there is a sufficient basis for further inquiry into whether the

⁷ The Financial Disclosure Statements do not list any salary income from the FBI or the National Guard for any year.

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1 Committee and Feldkamp have accepted an excessive or prohibited contribution in connection
2 with the loans in question. See MUR 5321 (Janet Robert); MUR 5138 (Ferguson).

3 Therefore, we recommend that the Commission find reason to believe that James L.
4 Feldkamp, and Jim Feldkamp for Congress and Patricia Siegmund, in her official capacity as
5 treasurer, violated 2 U.S.C. §§ 441a(f) and 441b(a) by knowingly accepting prohibited or
6 excessive funds. In addition, because the Committee may have incorrectly characterized the loan
7 amounts as the "personal funds" of James Feldkamp on the Committee's disclosure reports, we
8 also recommend that the Commission find reason to believe that Jim Feldkamp for Congress and
9 Patricia Siegmund, in her official capacity as treasurer, violated 2 U.S.C. § 434(b). Because
10 James Feldkamp and the Feldkamp Committee submitted a joint response, have the same
11 counsel, and their violations arose from the same activity, we recommend a joint factual and
12 legal analysis for the respondents. See Attachment 2.

13 The complaint suggests that the candidate's mother, Phyllis Feldkamp, may have been
14 the source of the funds based upon the timing of her reimbursed contribution and the candidate's
15 apparent lack of personal funds. See *supra*, note 1. If Phyllis Feldkamp did provide the funds
16 for the loans, she may have made an excessive contribution to the Feldkamp Committee. See 2
17 U.S.C. § 441a(a)(1)(A). However, at this time, the suggestion that she is the source of the funds
18 is speculative. If during the investigation we discover that the candidate's mother was the source
19 of some, all, or none of the loans, we will evaluate the new information and make appropriate
20 recommendations to the Commission regarding her potential liability under the Act.

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Accordingly, we request that the Commission approve the use of compulsory process in this matter.

V. RECOMMENDATIONS

1. Find reason to believe that James L. Feldkamp violated 2 U.S.C. §§ 441a(f) and 441b(a);
2. Find reason to believe that Jim Feldkamp for Congress and Patricia Siegmund, in her official capacity as treasurer, violated 2 U.S.C. §§ 441a(f), 441b(a), and 434(b);
3. Approve the attached Factual and Legal Analysis.
4. Authorize the use of compulsory process in this matter, including the issuance of interrogatories, document subpoenas and deposition subpoenas.

5. Approve the appropriate letters.

Lawrence H. Norton
General Counsel

Rhonda J. Vosdingh
Associate General Counsel
for Enforcement

12-11-06
Date

BY: Kathleen M. Guith
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